

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

NAVIGATOR HEARTLAND
GREENWAY LLC,

Plaintiff,

v.

IOWA UTILITIES BOARD, A DIVISION
OF THE DEPARTMENT OF COMMERCE,
STATE OF IOWA,

Defendant,

and

SIERRA CLUB IOWA CHAPTER,

Intervenor.

CASE NO. EQCE088024

**PLAINTIFF’S ANSWER AND
AFFIRMATIVE DEFENSES TO THE
INTERVENTION PETITION**

COMES NOW the Plaintiff, Navigator Heartland Greenway LLC (“Navigator”), through its undersigned counsel, hereby submits this Answer and Affirmative Defenses to the Intervention Petition submitted by Intervenor Sierra Club Iowa Chapter (“Sierra Club”):

1. The Iowa Chapter of the Sierra Club has approximately 7,000 members across Iowa and is part of a national organization with over 700,000 members. Our mission is to preserve and protect Iowa’s environment. An important focus of our advocacy is addressing the crisis of climate change. We also work for the preservation of farmland and soil health. We are opposed to the carbon dioxide pipeline project proposed by Navigator Heartland Greenway LLC (Navigator) because it is a false solution to climate change that will divert attention from more effective solutions. We also oppose the Navigator project because it will adversely impact the farmland over which it would be constructed.

RESPONSE: Navigator does not have sufficient information about the membership of the Iowa Chapter of the Sierra Club or the national organization, the Sierra Club's mission, or the focus of its advocacy and work. As a result, Navigator denies these statements in paragraph 1. The remainder of paragraph 1 contains a statement of Sierra Club's position on Navigator's underlying hazardous liquid pipeline permit application and, therefore, does not require a response from Navigator.

2. Navigator is a pipeline company within the meaning of Iowa Code 479B.2, subject to the jurisdiction of the Iowa Utilities Board (IUB).

RESPONSE: Admitted.

3. The IUB is a state agency having the jurisdiction and authority to permit hazardous liquid pipelines in Iowa, pursuant to Chapter 479B of the Iowa Code.

RESPONSE: Admitted. Moreover, Navigator has initiated a proceeding with the IUB, designated HLP-2021-0003, *In re Navigator Heartland Greenway LLC*, following Iowa law for its proposal to construct a carbon dioxide pipeline in the State of Iowa, and Navigator affirmatively states that the regulatory process necessary for approval of a carbon dioxide pipeline in the State of Iowa is complex, lengthy, and intensive, as is appropriate to consider the interests of all stakeholders, including not just the pipeline company and the owners of the land upon which the pipeline will be constructed, but also the public—and the environment—at large.

4. Sierra Club has been working with landowners who will likely be impacted by the construction and operation of the Navigator pipeline. The landowners are an important factor in challenging the permitting of the pipeline. It is therefore important for Sierra Club to have the

names of all likely affected landowners in order to help them respond to the threat of the pipeline crossing their land.

RESPONSE: Navigator admits Sierra Club has been working with landowners, and denies the remaining allegations in paragraph 4. Despite the confidentiality of the mailing lists, Sierra Club admits it has been able to make contact with affected landowners by word of mouth, which is the most appropriate means given that it allows landowners to “opt into” contact with Sierra Club. Indeed, Sierra Club’s involvement in opposing the proposed carbon capture pipelines is well known and documented, such that interested landowners can easily seek them out. *See, e.g.,* Jeffrey Tomich, E&E News, *CO2 pipeline developers, foes clash over landowner lists* (Nov. 3, 2022), <https://www.eenews.net/articles/co2-pipeline-developers-foes-clash-over-landowner-lists/> [hereinafter E&E News Article]; Sierra Club Iowa Chapter, Carbon Dioxide Pipelines (last visited Nov. 10, 2022), <https://www.sierraclub.org/iowa/carbon-dioxide-pipelines>. Indeed, Sierra Club itself acknowledges that it has been able to accomplish its goals without the having the mailing lists. *See, e.g.,* Mazour Aff. ¶ 2 (“I currently have the names of a few hundred landowners that I have been working with.”); E&E News Article (“Even without Summit’s landowner list, Mazour said the group has been assembling a strong coalition to oppose the pipeline.”).

5. Navigator was required by the IUB to submit the list of landowners to the IUB, but Navigator requested that the list be kept confidential and not released to the public. Sierra Club filed a resistance to that request.

RESPONSE: Denied as an inaccurate characterization of the facts. While Navigator admits that the IUB issued an order regarding the initial mailing lists and Navigator, upon filing the initial and subsequent lists requested that the lists be kept confidential and not

released to the public, Navigator, in fact, filed two applications for the confidential treatment of its mailing lists: one on December 30, 2021, and another on August 22, 2022. Sierra Club, however, only filed one resistance. Specifically, on August 24, 2022, Sierra Club filed its **Resistance to Application for Confidential Treatment, resisting Navigator's August 22, 2022 application.**

6. Navigator in this action seeks to prevent release of the landowner list on several grounds. Sierra Club resists Navigator's arguments as follows:

A. Navigator has not shown, pursuant to Iowa Code § 22.7(3), that the landowner list is a trade secret because it has not shown that the list has independent economic value. Further, in that connection, Navigator has not shown that its alleged competitor, Summit, would gain any competitive advantage from having access to the list.

RESPONSE: Navigator denies the allegations in paragraph 6(A). These contentions are the subject of the current lawsuit.

B. Navigator has not shown, pursuant to Iowa Code § 22.7(6), that releasing the landowner list would give a competitor a competitive advantage and would serve no public purpose. Judge Nelmark, in *Summit Carbon Solutions v. IUB*, Polk County No. CVCV062900 (2022), specifically found that release of the list would serve a public purpose.

RESPONSE: Navigator denies the allegations in paragraph 6(B). These contentions are the subject of the current lawsuit.

C. Navigator is incorrect in relying on an alleged privacy balancing test. The decision in *Clymer v. City of Cedar Rapids*, 601 N.W.2d 42 (Iowa 1999), was based on a specific statutory exemption in the Open Records Law and did not announce a general balancing test.

RESPONSE: Navigator denies the allegations in paragraph 6(C). These contentions are the subject of the current lawsuit.

AFFIRMATIVE DEFENSES

COMES NOW Navigator Heartland Greenway LLC, through its undersigned counsel, and by way of further defense, without assuming the burden of proof as to any matter that Sierra Club must prove, hereby states the following Affirmative Defenses to Sierra Club's Intervention Petition:

1. Sierra Club has failed to state a claim upon which relief can be granted.
2. Sierra Club's claims are barred, in whole or in part, by the reasons stated in Navigator's Petition.
3. Sierra Club's claims are barred, in whole or in part, because Sierra Club has failed to comply with the provisions of Iowa Code Chapter 22.
4. Sierra Club's claims are barred, in whole or in part, by the plain language of Iowa Code Chapters 22 and/or 479B.
5. Sierra Club's claims are barred, in whole or in part, as they are not ripe.
6. Sierra Club's claims are barred, in whole or in part, as there is no justiciable controversy before the Court and Sierra Club has sustained no injury nor suffered any damages.
7. Sierra Club's claims are barred, in whole or in part, because Sierra Club claims that it is under threat of irreparable harm but and any harm alleged may be remedied at law.
8. Sierra Club's claims are barred, in whole or in part, because the injury inflicted upon Navigator and the affected landowners (especially those who are no longer included on the proposed route) by granting Sierra Club's requested relief will greatly outweigh the harm, if any, sustained by Sierra Club.

9. Sierra Club's claims are barred, in whole or in part, because its claims are meritless, and they have no likelihood of success.

10. Sierra Club's claims are barred, in whole or in part, because the public interest is against its requested relief.

11. Sierra Club's claims may be barred, in whole or in part, by equitable doctrine including, without limitation, unclean hands, equitable estoppel, laches, consent, acquiescence, and/or waiver.

12. As a separate and affirmative defense to Sierra Club's claims, Navigator alleges the claims may be barred, in whole or in part, by any or all of the affirmative defenses contemplated by the Iowa Rules of Civil Procedure or any Iowa statute or common law. Navigator cannot determine the extent to which Sierra Club's claims may be barred by one or more of these affirmative defenses not specifically set forth above until Navigator has had the opportunity to complete discovery. Therefore, Navigator incorporates all such affirmative defenses as if fully set forth herein and reserves the right to add such other specific affirmative defenses as investigation, discovery, or legal research reveals them.

WHEREFORE, Plaintiff Navigator Heartland Greenway, LLC respectfully requests the Court grant the relief requested in the Petition, and for such other and further relief as the Court deems just and appropriate under the circumstances.

Respectfully submitted,

/s/ Brian P. Rickert

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ATTORNEYS FOR PLAINTIFF NAVIGATOR
HEARTLAND GREENWAY LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 27, 2022, I electronically filed the foregoing with the Clerk of Court by using the Electronic Document Management System, a copy of which will be electronically served upon all counsel of record registered with EDMS via Notice of Electronic Filing or Presentation.

/s/ Brooke E. Johnson, Legal Assistant